THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 10978 AND 12657 OF 2005

DATED: 26-10-2005

WRIT PETITION NO. 10978 OF 2005

Between

M/s. Godrej Agrovet Ltd.

China pothapally, West Godavari District,

Rep. by its Manager (F.A) R.S. Swaminathan.

..... PETITIONER

And

The Commercial Tax Officer,

Eluru, West Godavari District.

..... RESPONDENT

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THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NOS. 10978 AND 12657 OF 2005

COMMON ORDER: (Sri B. Sudershan Reddy, J)

Both the writ petitions are being disposed of by this common order since the question that falls for our consideration in both the matters is one and the same.

The short question that falls for our consideration in these writ petitions is as to whether the proviso to sub-rule (7) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 (for short 'the Rules') enables a dealer to file C forms after making of the assessment by the competent authority. The question is not *res intregra* but squarely covered by an authoritative pronouncement of this Court in ***RAJESWARI STONE POLISHERS v. STATE OF A.P*** wherein the Division Bench speaking through Jeevan Reddy, J (as his lordship then was) observed that sub-rule (7) of Rule 12 empowers the assessing authority to receive C forms even after making the assessment, provided the dealer satisfies the authority that he was prevented by sufficient cause from filing the said forms before making of the assessment. "*The proviso to sub-rule (7) does not prescribe any time within*

which a dealer can file C forms, which means that at any time after making of the assessment, a dealer can file the forms and so long as he is able to satisfy the authority about the sufficient cause contemplated by the proviso, the authority shall have to receive those forms" (emphasis is of ours).

The decision of this Court in *Rajeswari Stone's* case (1 supra) received its affirmation at the hands of the apex Court in ***STATE OF A.P v. HYDERABAD ASBESTOS CEMENT PROD. LTD***. It is, however, clarified by the apex Court that the power to receive C forms even by the first assessing authority can be exercised only where sufficient cause is shown by the dealer for not filing them up to the time of assessment.

It is thus clear that sub-rule (7) of Rule 12 of the Rules confers power upon the assessing authority to receive C forms where sufficient cause is shown by the dealer for not filing them up to the time of assessment. There is no limitation as such provided for receiving the C forms and they can be received at any time after the order of assessment, provided sufficient cause is shown. We may, however, hasten to add that the making of assessment itself cannot be postponed at the instance of a dealer in order to enable the dealer to produce such C forms, if such postponement results in bar of limitation in making the assessment. It means that if an assessment can be postponed and if such postponement is not hit by the limitation, time can always be extended by the assessing authority in order to enable any dealer to produce the C forms and in case, if such C forms are not produced, it does not take away the right of the dealer to produce them even after making of the assessment order, provided a sufficient cause is shown.

In W.P No. 12657 of 2005, the assessing authority rejected the request of the petitioner on the ground that F forms have been filed after a period of more than six months after issuing the demand notice, which in our considered opinion, is unsustainable. There is no limitation as such for receiving the F forms provided sufficient cause is shown. The impugned order is, therefore, set aside. The authority is directed to consider whether the dealer had shown sufficient cause for the belated filing of the F forms and decide the matter on its own merits. If the authority comes to

the conclusion that the dealer has shown the sufficient cause, it shall receive the same for passing further appropriate orders in accordance with law.

That so far as W.P No. 10978 of 2005 is concerned, the authority did not pass any order either accepting or rejecting the request of the dealer to receive the C forms. However, in the counter affidavit it is stated that the dealer did not produce any such C forms, about which we do not propose to express any opinion though the learned counsel for the petitioner made an attempt to produce evidence in support of the plea that C forms have been produced by the dealer before the authority. It shall be open to the dealer to produce the C forms even now before the assessing authority and the same shall be received, provided sufficient cause is shown by the petitioner for the belated filing of the C forms. The petitioner is accordingly directed to produce the C forms within a period of three weeks from today, which shall be received by the authority for its consideration to decide as to whether the petitioner had shown any sufficient cause for the belated filing of the C forms and appropriate further orders shall be passed in accordance with law.

The Writ Petitions are accordingly disposed of without any order as to costs.

(B. Sudershan Reddy, J)

26..10..2005

(S. Ananda Reddy, J)

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